

6-352A026

No.

Date DEC 18 1986

Fee \$ 10.00

ITEL

ICC Washington, D. C. **Istel Rail Corporation**

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

December 10, 1986

RECORDATION NO. 10129 FILED & RECORDED

DEC 18 1986 2- 3 0 PM

INTERSTATE COMMERCE COMMISSION

Hon. Noretta R. McGee, Secretary
Interstate Commerce Commission
Washington, D.C. 20423

Re: Amendment No. 5 to the July 26, 1978 Lease Between Istel Corporation, Rail Division, and Minnesota, Dakota & Western Railway Company

Dear Ms. McGee:

On behalf of Istel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 U.S.C. Sec. 11303(a), along with a check in the amount of 10 covering the recordation fee.

Please record this Amendment under the Lease Agreement dated July 26, 1978 between Istel Corporation, Rail Division, and Minnesota, Dakota & Western Railway Company, which was filed with the ICC on February 22, 1979 and given Recordation No. 10129.

The names and addresses of the parties to the aforementioned Amendment are listed as follows:

Istel Rail Corporation (Lessor)
55 Francisco Street
San Francisco, California 94133

Minnesota, Dakota & Western Railway Company (Lessee)
One Jefferson Square
Boise, Idaho 83728

TOP OFFICE OF
THE SECRETARY OF
DEC 18 1986
MOTOR VEHICLE DIVISION

This Amendment adds one hundred (100) 50'6", 100-ton, Plate F, XP boxcars bearing reporting marks MDW 1700 through MDW 1799, as described in the new Schedule F, and amends certain of the terms of the Lease.

Please return to the undersigned the stamped counterparts not required for filing purposes, along with the fee receipt and a letter from the ICC acknowledging this filing.

Very truly yours,

Josie Villaflores
Legal Assistant

cc: Howard L. Chabner, Esq.
Ginny Hanger

Encl.

Interstate Commerce Commission
Washington, D.C. 20423

12/22/86

OFFICE OF THE SECRETARY

Josie Villaflores
Legal Assistant
Itel Rail Corporation
55 Francisco Street
San Francisco, Calif. 94133

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 12/18/86 at 2:30pm, and assigned re-
recording number(s). 10129-I

Sincerely yours,

Noreta L. McGee
Secretary

Enclosure(s)

SE-30
(7/79)

05/08/86

RECORDATION NO. 10129 Filed & Recorded

DEC 18 1985 2- 3 0 PM

AMENDMENT NO. 5

INTERSTATE COMMERCE COMMISSION

THIS AMENDMENT NO. 5 (the "Amendment") to that certain Lease Agreement, as amended, (the "Agreement") made as of July 26, 1978, between ITEL Corporation, Rail Division and MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY ("Lessee") is made as of this 24 day of October, 1986 between ITEL RAIL CORPORATION, as successor in interest to ITEL Corporation, Rail Division ("Lessor"), and Lessee.

R E C I T A L S:

- A. Lessor and Lessee are parties to the Agreement pursuant to which four hundred eighty-four (484) boxcars (together with the boxcars listed on the Equipment Schedule attached hereto, the "Boxcars") described therein have been leased to Lessee.
- B. Lessor and Lessee desire to add one hundred (100) Boxcars bearing reporting marks MDW 1700-1799 to the Agreement and to place such Cars into an assignment pool on the lines of a third party for a period of time.

NOW THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto agree to amend the Agreement as follows:

- 1. All terms defined in the Agreement shall have their defined meanings when used in the Amendment.
- 2. Schedule F attached hereto is hereby added to the Agreement in its entirety.
- 3. With respect to the Boxcars on Schedule F only, the last sentence of Subsection 2.A. of the Agreement is replaced by the following:

"The term of the Agreement with respect to the Boxcars listed on Schedule F shall commence upon delivery of each such Boxcar pursuant to Subsection 3.A., as amended hereinbelow, and shall expire on October 29, 1991."

- 4. With respect to the Boxcars on Schedule F, Subsection 3.A. is replaced by the following:

"3. Supply Provisions

- A. Lessee hereby approves the specifications of the Boxcars delivered to it by Lessor. Lessor shall, at its expense, remark the Boxcars with the railroad markings of Lessee in compliance with all applicable regulations. Each Boxcar

shall be deemed delivered and subject to the terms and provisions of this Agreement at 12:01 a.m. on the date and at the location such Boxcar is remarked ('Delivery'). After the Boxcars have been remarked, the Cars shall be moved to the railroad line of the Atchison, Topeka and Santa Fe Railway Company ("ATSF") at no cost to Lessee as soon as is consistent with mutual convenience and economy. Notwithstanding that Lessee may not have immediate physical possession of the Boxcars leased hereunder, Lessee agrees to pay the rent set forth in this Agreement. To move the Boxcars to Lessee's railroad line and to ensure optimal use of the Boxcars after the Initial Loading (as hereinafter defined), Lessor agrees to assist Lessee in monitoring Boxcar movements and, when deemed necessary by Lessee, to assist in the issuance of movement orders with respect to such Boxcars to other railroad lines in accordance with Interstate Commerce Commission ("ICC") and Association of American Railroads ("AAR") interchange rules adopted by the AAR Mechanical Division, Operations and Maintenance Department ("Interchange Rules"). If Lessor incurs expenses in having other railroads move Boxcars in accordance with this Section with Lessee's request and approval, except for any expenses incurred in the initial delivery of such Boxcars pursuant to this Section, Lessee shall reimburse Lessor for such expenses within ten (10) days of receipt of an invoice from Lessor. For the purposes hereof, the term "Initial Loading" as to each Boxcar, shall be "the date such Boxcar is delivered to and accepted by ATSF."

5. With respect to the Boxcars on Schedule F., Subsection 3.C. is replaced by the following:

"C. Additional Boxcars shall be leased from Lessor only upon the mutual agreement of the parties. During the term of this Agreement, Lessor may, at its expense, replace any or all of the Boxcars with similar boxcars upon prior written notice from Lessor to Lessee; provided, however, that any such replacement shall not prevent or prohibit Lessee from fulfilling its obligations to provide transportation and facilities upon reasonable request therefor."

6. Lessor consents to Lessee entering into an assignment agreement with ATSF in the form of Exhibit A attached hereto ("ATSF Assignment"), provided that Lessor shall perform Lessee's duties under the ATSF Assignment, except the duties described in the sixth (6th) paragraph therein, and further provided that Lessee shall, only upon Lessor's instructions or consent, exercise its option to terminate, extend, renegotiate or request free storage under the ATSF Assignment.
7. During the term and any extended term(s) of the ATSF Assignment ("Assignment Period"), Subsection 7.A.(i) of the Agreement shall be amended with respect to the Boxcars on Schedule F by deleting the words "the Boxcars bearing reporting marks MDW 6000-6099, MDW 9000-9099 and MDW 10000-10199" and the words "92.5 percent" and replacing such words with the words "the Boxcars bearing reporting marks MDW 1700-1799" and

respectively, and Subsections 7.A.(ii), 7.D., 7.E., 7.F., 7.G. and 7.H. of the Agreement shall be of no force or effect with respect to the Boxcars on Schedule F. Lessor recognizes that payments will be reduced by the amount of reclaim allowed to ATSF under the ATSF Assignment.

8. Prior to the commencement, if applicable, and upon and after the expiration or termination of the ATSF Assignment, the terms of Section 7 of this Amendment shall be of no force or effect and the following shall apply with respect to the Boxcars on Schedule F only:

(a) the words "the Boxcars bearing the reporting marks MDW 6000-6099, MDW 9000-9099 and MDW 10000-10199" and the words "92.5 percent" in Subsections 7.A.(i) and 7.A.(ii) of the Agreement shall be deleted and replaced by the words "the Boxcars bearing the reporting marks MDW 1700-1799" and "85 percent," respectively.

(b) The words "87.5 percent" and the words "for the boxcars bearing the reporting marks MDW 6000-6099, MDW 9000-9099 and MDW 10000-10199" in Subsections 7.D. and 7.H. of the Agreement shall be deleted and replaced by the words and "for the Boxcars bearing reporting marks "MDW 1700-1799," respectively.

9. With respect to the Boxcars on Schedule F only, new subsections 7.I., 7.J. and 7.K. shall be added to the Agreement as follows:

"I. Unless Lessee receives Lessor's prior written consent, Lessee shall not take any action which diminishes the base hourly rate or the base mileage rate listed for the Boxcars in the January 1986 edition of the ICC Official Railway Equipment Register (each rate a 'Boxcar Rate', collectively, the 'Boxcar Rates').

"J. In the event that the Interstate Commerce Commission ("ICC") reduces or eliminates either or both Boxcar Rates for any reason, the words:

'...if the Utilization of all such Boxcars delivered to Lessee on an aggregate basis for each calendar year shall be equal to or less than .'

in Subsection 7.A.(i) of the Agreement shall be replaced by:

'...if the Payments earned by the Boxcars in the aggregate for any calendar year are less than or equal to an average of

(such amount shall be known as the "Itel Base Rent").';

and Subsection 7.A.(ii) shall be deleted and replaced by the following:

'In the event that the Payments earned by the Boxcars in the aggregate during any calendar year exceed the Itel Base Rent, Lessor shall receive an amount equal to the

earned by the Boxcars in excess of the Itel Base Rent.'

"K. In the event that the ICC reduces or eliminates either or both Boxcar Rates for any reason, if the Payments earned during any calendar quarter are less than or equal to an average of thousand five hundred sixty-two dollars and eighty cents Lessor may, at its option, and upon 60 days written notice, terminate the Agreement as to such Boxcars as Lessor shall determine; provided, however, that Lessor shall be responsible for all costs associated with remarking such terminated Boxcars and moving such terminated Boxcars to the lines of another lessee."

11. With respect to the Boxcars on Schedule F only, a new sentence is hereby added to Section 10 of the Agreement as follows:

"However, if any Boxcars are terminated by Lessor pursuant to Subsection 7.K., Lessor shall be responsible for the costs associated with the termination of such Boxcars as described therein."

12. Nothing herein contained shall (i) be deemed to constitute a waiver or otherwise modify, affect or impair any sums due to Lessor or Lessee with respect to any Boxcar, including the Boxcars on Schedule F, under the terms and conditions of the Agreement or (ii) be deemed to constitute a waiver or otherwise modify, affect or impair the powers, rights, or remedies vested in or available to Lessor or Lessee with respect to any Boxcar under the terms and conditions of the Agreement.

13. Except as expressly modified by the Amendment, all terms and provisions of the Agreement shall remain in full force and effect with respect to all of the Boxcars subject to the Agreement.

14. This Amendment may be executed by the parties hereto in any number of counterparts, and all said counterparts taken together shall be deemed to constitute one and the same instrument.

ITEL RAIL CORPORATION

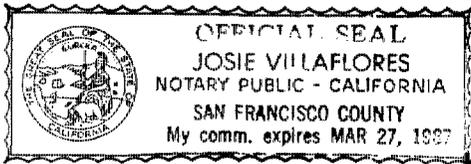
MINNESOTA, DAKOTA & WESTERN
RAILWAY COMPANY

By: *D. Hayes*
Title: *President*
Date: *10/24/86*

By: *Robert M. Wallace*
Title: *Vice President*
Date: *9/12/86*

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 24th day of October, 1986, before me personally appeared Richard P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL RAIL CORPORATION, that the foregoing Amendment No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Josie Villaflores
Notary Public

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

On this 12th day of September, 1986, before me personally appeared Robert W. Walters, to me personally known, who being by me duly sworn says that such person is President of MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY, that the foregoing Amendment No. 5 was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robb Lewis
Notary Public

SCHEDULE F

IteI Rail Corporation hereby leases the following Cars to Minnesota, Dakota & Western Railway Company subject to the terms and conditions of that certain Lease Agreement dated as of July 26, 1978.

A.A.R. Mech. Desig.	Description	Numbers	Length	Dimensions Inside Width	Height	Doors Width	No. of Cars
XP	50', 100-ton, Plate F cushion underframe nailable steel floor	MDW 1700-1799	50'6"	9'6"	12'11"	2-8' Plug	100

ITEL RAIL CORPORATION

By: *D. D. Hayes*

Title: *President*

Date: *10/24/86*

MINNESOTA, DAKOTA & WESTERN
RAILWAY CORPORATION

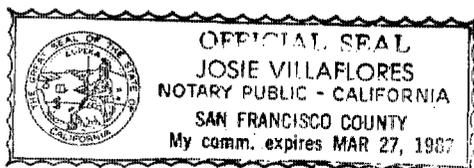
By: *Robert W. Walker*

Title: *Vice President*

Date: *9/12/86*

STATE OF CALIFORNIA)
) ss:
COUNTY OF SAN FRANCISCO)

On this 5th day of October, 1986, before me personally appeared Desmond P. Hayes, to me personally known, who being by me duly sworn says that such person is President of ITEL RAIL CORPORATION, that the foregoing Schedule F was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Josie Villaflores
Notary Public

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

On this 12th day of September, 1986, before me personally appeared Robert W. Walters, to me personally known, who being by me duly sworn says that such person is President of MINNESOTA, DAKOTA & WESTERN RAILWAY COMPANY, that the foregoing Schedule F was signed on behalf of said corporation by authority of its board of directors, and such person acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robb Lewis
Notary Public



Minnesota, Dakota & Western Railway Company

P.O. Box 7747
Boise, Idaho 83707

a Boise Cascade
Subsidiary

EXHIBIT A

Mr. Donald G. McInnes
General Superintendent, Transportation
The Atchison, Topeka and Santa Fe Railway Company
80 East Jackson Blvd.
Chicago, Illinois 60604

Dear Mr. McInnes:

Please accept this letter as the agreement ("Assignment Agreement") whereunder Minnesota, Dakota & Western Railway Company ("Assignor") shall supply The Atchison, Topeka and Santa Fe Railway Company ("Assignee") with one hundred (100) fifty-foot, 100 ton, Plate F, XP boxcars bearing reporting marks within the series MDW 1700-1799 ("Boxcars"). Assignee shall place all assigned Boxcars into an assignment pool on its railroad lines under Car Service Directive 145.

The term of this Assignment Agreement, with respect to each Boxcar, shall commence on the date and at the location such Boxcar is delivered to and accepted by the Assignee and shall expire as to all the Boxcars three (3) years from the date the last Boxcar is delivered to and accepted by the Assignee ("Initial Term"). This Assignment Agreement shall be extended only upon the mutual agreement of the parties (such extended period an "Extended Term").

It is understood and agreed that during the Initial Term and any Extended Term of this Assignment Agreement, Assignee's only obligation with regard to the Boxcars placed into assigned pool service hereunder shall be (i) compliance with the handling carrier's obligations under AAR Interchange Rules while the Boxcars are in Assignee's possession, and (ii) the fulfillment of its obligations upon the expiration or termination of this Assignment Agreement as set forth herein. Assignee shall not place the Boxcars into the assignment pool prior to receiving Assignor's consent to do so.

Within thirty (30) days after each calendar month, Assignee shall provide Assignor with a summary ("Monthly Summary") which lists each Car reporting mark and number; the date such Car was first loaded with freight, if applicable, the date such Car was interchanged onto or off of Assignee's lines during such calendar month.

If any Boxcar returns to Assignor's line as a result of Assignee (1) not filing the assignment pool code properly, or (2) not properly endorsing the waybill for such Boxcar, Assignee shall be responsible for all costs associated with returning such Boxcar to Assignee. Assignor shall use its best efforts to prevent any Boxcar from being interchanged onto its lines during the term of the Assignment Agreement, including advising their connecting carrier that the Boxcars have been placed into an assignment pool on Assignee's lines and that the connecting carrier should not return such Boxcars to Assignor during the term of the Assignment Agreement.

If, at any time during the Initial Term or Extended Term, the Car Service Rules or Car Hire Rules of the Association of American Railroads are terminated or amended in any material respect, or if any change occurs in payment rates made by railroads generally for the use or handling of boxcars, the parties hereto shall negotiate a new assignment agreement which is mutually satisfactory to Assignor and Assignee. If the parties are unable to negotiate a new assignment agreement within forty-five (45) days, either party may terminate the Assignment Agreement upon not less than sixty (60) days' prior written notice to the other.

Upon expiration or termination of this Assignment Agreement, Assignee shall insure that the Boxcars are in interchange condition, normal wear and tear excepted, and shall remove the Boxcars from Car Service Directive 145. Thereafter, Assignee shall use its best efforts to provide final outbound loads for each Boxcar. At Assignor's option, Assignee shall grant up to one hundred twenty (120) days free storage for each such Boxcar or shall deliver, at Assignee's expense, each such Boxcar to any interchange point on Assignee's lines designated by Assignor. Assignor shall designate in writing an interchange point on the Assignee's lines not less than twenty (20) days prior to the expiration of the storage period described herein. Within fifteen (15) days of such notice, Assignee shall begin movement of the Boxcars to the designated interchange point. For each Boxcar that has not begun movement to the interchange point within such fifteen (15) day period, all applicable per diem and mileage charges will apply in accordance with the Car Hire Rules of the AAR. For each Boxcar for which a final outbound load is not provided, Assignor shall grant per diem and mileage relief to Assignee until the hour during which such Boxcar is interchanged off Assignee's railroad lines.

Assignee recognizes that Assignor's rights and Assignee's rights are subject and subordinate to the rights of any lessor, owner or secured party with respect to the Boxcars, but Assignor hereby represents and covenants that it has full authority to make this Assignment Agreement.

Assignee and Assignor also agree that during the term of this Agreement, or any extended term, cars will be assigned to the Boise Cascade paper mill located at Boise Southern, Louisiana; and that such assigned cars may be routed outbound from Boise Southern, Louisiana, over the lines of the Kansas City Southern Railroad. Provided, however, that under no circumstances, shall such routings over the Kansas City Southern Railroad exceed twenty (20) cars in any given calendar month.

We trust this Assignment Agreement will assist you in meeting your equipment requirements in the coming months.

Please indicate your concurrence to the above terms and conditions by signing below and arrange to have the original returned to me.

Sincerely,

MINNESOTA, DAKOTA & WESTERN
RAILWAY COMPANY

NAME: Robert W. Wallace

TITLE: Vice President

DATE: 9/11/86

CONCURRENCE BY THE ATCHISON, TOPEKA
AND SANTA FE RAILWAY COMPANY

NAME: [Signature]

TITLE: General Supt. of Transportation

DATE: Sept. 24, 1986